

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-204050; B-204094

**DATE:** July 6, 1982

**MATTER OF:** Schreck Industries, Inc; Raymond Corporation

**DIGEST:**

1. Bid was responsive to a standard design item certification requirement where the bidder specified a truck model which it claimed would be a standard design at the time of delivery, as required by the specification.
2. Where (1) the specification states that a certified standard design forklift truck may be modified to meet the technical requirements of the specification; (2) the IFB does not limit the number or type of changes allowed except to provide that components must be from an established manufacturer; and (3) it appears that the agency did not intend to consider proposed modifications in determining the responsiveness of bids, the model number of standard product furnished by the bidder is for consideration by the agency as part of its determination of bidder responsibility, not bid responsiveness.
3. The inaccuracy of a portion of the information made available to an agency during a preaward survey will not render invalid the resulting recommendation and responsibility determination, at least where there is no indication that the inaccurate information was pivotal in determining the bidder's responsibility.
4. Where an IFB standard design provision establishes no specific standards for determining the number and extent of modifications permitted under the specification, except for the general proposition that components be from an established manufacturer, the provision does not establish a definitive responsibility criterion.

Schreck Industries, Inc. and Raymond Corporation protest the award of a contract to Allis-Chalmers, Inc. under invitation for bids (IFB) No. DLA700-81-B-0458, issued by the Defense Logistics Agency (DLA) for 60 shipboard forklift trucks. The protesters principally contend that Allis-Chalmers offered a truck which did not satisfy the standard design item requirement in the IFB, and that this deficiency rendered its bid nonresponsive. Raymond also asserts that Schreck's bid was nonresponsive to this requirement. For the reasons discussed below, we deny the protests.

The solicitation was issued on February 24, 1981 and bids were opened July 7. Allis-Chalmers was the apparent low bidder while Schreck and Raymond, respectively, were the second and third low bidders. Award was made to Allis-Chalmers on September 11 notwithstanding these protests, based on DLA's determination that this requirement was urgent. See Defense Acquisition Regulation (DAR) § 2-407.8(b)(3)(i).

The IFB contained the following provision under the "Special Instructions" in the bid schedule:

"STANDARD DESIGN ITEM CERTIFICATION: THE OFFEROR CERTIFIES THAT THE MAKE/MODEL IDENTIFIED BELOW, WHICH IS OFFERED UNDER THIS SOLICITATION, IS ITS STANDARD DESIGN ITEM WHICH FULLY COMPLIES WITH THE REQUIREMENTS OF MIL-T-40629N

MAKE-MODEL: \_\_\_\_\_"

Allis-Chalmers certified that it would furnish its model "SR40-EE 24V - shipboard," which apparently would be based on its standard model SR40. Paragraph 3.1 of the specification provided that:

"General. \* \* \* Trucks shall be constructed and equipped to meet all requirements specified herein. The end item and major and minor assemblies including accessories used by the manufacturer, shall be new and of a standard design current at the time of delivery, except for such modifications from manufacturer's standards as may be required to conform to these specification requirements. The component parts of the unit need not be the products of the same manufacturer. However, the manufacturers shall be so established in the industry so that prompt and continuing service and delivery of repair parts will be assured."

Allis-Chalmers maintains that its bid was responsive since it offered a standard design item which DLA determined would conform to the specification following modifications permitted by paragraph 3.1.

Schreck and Raymond concede that the specification permits some modification of the standard design item to meet the IFB's technical requirements. They maintain, however, that the model specified by Allis-Chalmers would have to be a "radical redesign" of the company's standard item, and that by specifying such a model Allis-Chalmers rendered its bid nonresponsive. They allege, for example, that substantial design changes would be involved in converting the SR40 from a single drive truck to the required dual drive type. It is the protesters' view that paragraph 3.1 of the specification should not be read as permitting unlimited modifications since the standard design item certification would then be a virtual nullity. Such an interpretation could not have been contemplated by DLA, the protesters reason since, in their view, the certification was intended to ensure that the trucks supplied would have a proven performance history.

DLA's position is simply that it sought the identity of the make/model of the offered product so that it could determine, in connection with the bidder's responsibility, that the bidder was experienced in manufacturing forklift trucks. DLA denies that the Allis-Chalmers bid was non-responsive to any solicitation requirement. We agree with DLA.

A bid is responsive if it unequivocally offers the exact thing called for in the IFB, so that upon acceptance it will bind the contractor to deliver an item in accordance with all the material terms and conditions of the IFB. Redeye Enterprises, Standard Equipment Company, B-204814, B-204814.2, March 25, 1982, 82-1 CPD 283. The plain language of the certification clause here required bidders to specify a make or model number which they certified to be a standard design item meeting all terms of the specification. Paragraph 3.1 of the specification lent flexibility to this clause by permitting modification of the specified standard design truck where necessary to satisfy the technical requirements of the specification. Read together, the clauses required bidders to offer a standard design model truck which could be modified,

if necessary, to satisfy those technical requirements. Neither the certification clause nor the specification set forth any limitation on the number or type of modifications allowed other than a requirement that components be the products of an established manufacturer.

Contrary to the protesters' view, we find no indication in the IFB that DLA intended to accept or reject bids on the basis of the extent of modifications necessary to make a standard design truck conform to the technical requirements of the IFB. The IFB contained no requirement that bids be accompanied by technical information indicating the extent of intended modifications, and the certification clause did not state that bids not conforming to its terms would be rejected as nonresponsive. Furthermore, paragraph 3.1 only required that trucks be of a standard design current at the time of delivery, not bid opening. In our view, these factors indicate that DLA intended to consider the standard design items specified by the bidders as part of its determination of bidder responsibility, that is, whether the bidder actually had a standard design and thus, the general experience DLA thought necessary for successful contract performance. Thus, whether Allis-Chalmers' truck was of standard design and could be modified to meet the specification was a judgment to be made by the contracting officer as part of his determination of Allis-Chalmers' responsibility. See World Wide Diesel, Inc., B-205599, May 6, 1982, 82-1 CPD 433; Tex-La Cable T.V., Inc., B-201558, April 5, 1982, 82-1 CPD 300.

In response to the certification requirement, Allis-Chalmers specified its model SR40-EE 24V - shipboard. The IFB asked for no more than that. Thus, we find that Allis-Chalmers' bid was responsive. Moreover, based on an affirmative recommendation from the preaward survey team, the contracting officer found Allis-Chalmers responsible. Our Office will not review a protest challenging an affirmative responsibility determination absent a showing of fraud or bad faith on the part of procuring officials, or an allegation that definitive responsibility criteria have not been applied. See Environmental Container Systems, Inc., B-201739, February 9, 1981, 81-1 CPD 83. Our Office adopted this policy because, normally, responsibility determinations are based in large measure on the judgment of the

contracting officer and, being subjective, are not readily susceptible to reasoned review. Central Metal Products, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Both protesters believe, however, that the exceptions to our general rule apply under the circumstances here.

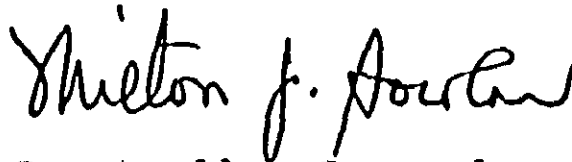
Schreck submits that our Office should review DLA's determination of Allis-Chalmers' responsibility because this determination was based in part on Allis-Chalmers' allegedly false representation that it previously had produced dual drive forklift trucks. Schreck urges our review on the ground of "clear error." In our opinion, however, the inaccuracy of some portion of the information made available to an agency at the time of a preaward survey does not necessarily render the resulting recommendation and responsibility determination invalid. Here, bidders were not required to have previously built dual drive trucks as a prerequisite to being found responsible, and we find no indication in the record that DLA deemed this factor pivotal to a contractor's ability to satisfactorily perform the contract. We note, moreover, that an alleged "clear error" is not one of the exceptions under which we will review affirmative responsibility determinations.

Raymond argues that we should review DLA's determination on the ground that the standard design item certification requirement was a definitive responsibility criterion because it limited the number of modifications that could be made. A responsibility criterion will be deemed definitive where it establishes an objective, specific requirement which a bidder must meet to be considered responsible. See, e.g., E.C. Campbell, Inc., B-203581, October 9, 1981, 81-2 CPD 295; Haughton Elevator Division, Reliance Electric Company, 55 Comp. Gen. 1051 (1976), 76-1 CPD 294; Airways Rent-A-Car, B-186062, September 10, 1976, 76-2 CPD 232. The IFB here established no specific standards for determining which modifications were permissible other than the rather general requirement that all components be products of established manufacturers (which no party has disputed). Thus, this consideration did not constitute a definitive responsibility criterion, and we will not review DLA's determination that Allis-Chalmers was a responsible bidder.

Since Allis-Chalmers was found to be responsible, and its bid was responsive, we conclude that the award here was proper. We therefore need not address Raymond's allegation that Schreck's bid was nonresponsive.

Schreck requests reimbursement for the cost of preparing its bid. In view of our conclusions, however, there is no basis upon which to consider this claim. Reservation Industries, Inc., B-199209, January 26, 1982, 82-1 CPD 54.

The protest is denied.

A handwritten signature in dark ink, appearing to read "Milton J. Fowler". The signature is fluid and cursive, with the first name "Milton" being the most prominent.

Acting Comptroller General  
of the United States